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HEALTH AND SENIOR SERVICES

SENIOR SERVICES BRANCH

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Proposed Readoption: N.J.A.C. 8:43F

Standards for Licensure of Adult and Pediatric Day Health Services Facilities

Authorized By: Fred M. Jacobs, M.D., J.D., Commissioner, Department of Health and Senior Services (with the approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5; and Reorganization Plan No. 001-1996.

Calendar Reference: See Summary below for explanation of exception to the calendar requirement.

Proposal Number: PRN 2006-235.

Submit written comments by October 6, 2006 to:

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Division of Health Facilities Evaluation and Licensing
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The agency proposal follows:

Summary

N.J.A.C. 8:43F, Standards for Licensure of Adult Day Health Care Facilities, first became effective on January 2, 1980. 11 N.J.R. 437(b) (September 6, 1979), 11 N.J.R. 622(b) (December 6, 1979). This chapter was readopted on March 18, 1985. 16 N.J.R. 3277(a) (December 3, 1984), 17 N.J.R. 706(a) (March 18, 1985). Effective February 20, 1990, new rules were adopted. 21 N.J.R. 3385(a) (November 6, 1989), 22 N.J.R. 635(a) (February 20, 1990). N.J.A.C. 8:43F was readopted, with several technical amendments, on March 6, 1995. 26 N.J.R. 4532(a) (November 21, 1994), 27 N.J.R. 939(a), (March 6, 1995). N.J.A.C. 8:43F expired on February 7, 2000, pursuant to the "sunset" provisions of Executive Order No. 66 (1978). New rules were adopted effective June 18, 2001. 32 N.J.R. 1920(a) (June 5, 2000), 33 N.J.R. 2121(a) (June 18, 2001). A comprehensive revision of this chapter was adopted in 2005, in which the name of the chapter was changed to

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Standards for Licensure of Adult and Pediatric Day Health Services Facilities. 36 N.J.R. 5240(a) (December 6, 2004), 37 N.J.R. 4931(a) (December 19, 2005).

N.J.A.C. 8:43F contains the rules governing the licensure of adult and pediatric day health services facilities in New Jersey. The purpose of the chapter is to ensure the health, safety, and welfare of the participants who are served by these facilities. Adult day health services facilities are non-residential settings that provide a variety of health, social and related support services to adults who are well enough to live in their homes, but who need ongoing health care services. Pediatric day health services facilities provide services exclusively to children who are technologically dependent or medically unstable and require nursing observation or care on an ongoing basis. There are presently 127 licensed adult day health services facilities and 12 pediatric day health services in New Jersey.

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 8:43F expires December 15, 2006. The Department has reviewed the rules at N.J.A.C. 8:43F and has determined that they continue to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The rules proposed for readoption would continue to provide the regulatory framework for participant care in these facilities. The readoption of these rules would permit the Department to continue to ensure the quality of health care services provided by licensed facilities.

As the rules have recently undergone a significant revision and the Department plans to propose a comprehensive revision of the rules governing pediatric day health services in the future, the Department is not proposing any amendments in this rulemaking.

Following is a summary of N.J.A.C. 8:43F.

N.J.A.C. 8:43F-1.1 provides the scope and purpose of the rules of the chapter.

N.J.A.C. 8:43F-1.2 contains definitions of terms used throughout the chapter.

Subchapter 2, Licensure Procedures, delineates the procedures and requirements for licensure as an adult or pediatric day health care facility.

N.J.A.C. 8:43F-2.1 provides the required fees and documents that must be submitted for licensure and the review of an applicant's track record.

N.J.A.C. 8:43F-2.2 establishes the procedures for the submission of a waiver request and the conditions under which a waiver will be considered.

N.J.A.C. 8:43F-2.3 describes the requirements for newly constructed, renovated, and expanded facilities.

N.J.A.C. 8:43F-2.4 requires a pre-licensure office conference for representatives of all new facilities.

N.J.A.C. 8:43F-2.5 provides the survey requirements.

N.J.A.C. 8:43F-2.6 establishes the conditions that a prospective licensee must meet before a license to operate an adult or pediatric day health services facility will be issued.

N.J.A.C. 8:43F-2.7 delineates the requirements for the surrender of a license.

N.J.A.C. 8:43F-2.8 addresses actions that may be taken against a license for violations of this chapter, N.J.A.C. 8:86 or 8:43E.

N.J.A.C. 8:43F-2.9 through 2.12 delineate the requirements for hearings, ownership responsibility, ownership disclosure, and transfers of ownership, respectively.

Subchapter 3, Administration, addresses the requirements that must be met by the administration of an adult or pediatric day health services facility.

N.J.A.C. 8:43F-3.1 delineates the responsibilities of the administrator.

N.J.A.C. 8:43F-3.2 delineates the qualifications of the administrator.

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N.J.A.C. 8:43F-3.3 establishes the policies and procedures that a facility is required to address.

N.J.A.C. 8:43F-3.4 delineates the incidents and/or circumstances that require "mandatory reporting" to the Department and/or other agencies.

N.J.A.C. 8:43F-3.5 addresses the requirements for financial arrangements for participants.

N.J.A.C. 8:43F-3.6 establishes participant care policies and procedures.

N.J.A.C. 8:43F-3.7 provides the requirements for the denial of admission of a participant.

N.J.A.C. 8:43F-3.8 establishes the requirements for the involuntary discharge of a participant.

N.J.A.C. 8:43F-3.9 addresses verbal and telephone orders from a prescriber.

N.J.A.C. 8:43F-3.10 establishes a facilities responsibility for interpretation services.

N.J.A.C. 8:43F-3.11 addresses the responsibility of a facility to notify a participant's family in the event of an incident involving a participant.

N.J.A.C. 8:43F-3.12 provides the requirement for participant follow-up.

N.J.A.C. 8:43F-3.13 delineates the records that a facility is required to maintain.

Subchapter 4 addresses Participant Rights.

N.J.A.C. 8:43F-4.1 requires that policies and procedures for participant rights must be posted "in English and the primary language(s) of the participants."

N.J.A.C. 8:43F-4.2 delineates the rights of each participant.

Subchapter 5 establishes the requirements for a participant's assessment and plan of care.

N.J.A.C. 8:43F-5.1 addresses a participant's pre-admission assessment.

N.J.A.C. 8:43F-5.2 establishes that facilities are to provide participants with assistance with activities of daily living.

N.J.A.C. 8:43F-5.3 delineates the requirement for the assessment of a participant.

N.J.A.C. 8:43F-5.4 provides for the development and implementation of a written plan of care, which is to include discharge planning.

Subchapter 6 addresses the general services that a facility is required to provide.

N.J.A.C. 8:43F-6.1 delineates the general services that a facility is to provide participants.

N.J.A.C. 8:43F-6.2 addresses staffing requirements.

N.J.A.C. 8:43F-6.3 establishes the requirements for personnel, including criminal background investigations, written job descriptions, appropriate licensure or certification for certain staff, written staffing schedules, a staff orientation and education plan, and the maintenance of health records for employees.

Subchapter 7, Nursing Services, provides all of the requirements related to nursing services.

N.J.A.C. 8:43F-7.1 provides for the designation of a director of nursing services.

N.J.A.C. 8:43F-7.2 delineates the minimum qualifications of a director of nursing services and N.J.A.C. 8:43F-7.3 establishes the responsibilities of this position.

N.J.A.C. 8:43F-7.4 provides the requirements for the provision of nursing services.

N.J.A.C. 8:43F-7.5 addresses the responsibilities of licensed nursing personnel.

Subchapter 8 establishes the requirements for medical services.

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N.J.A.C. 8:43F-8.1 delineates the requirements for the provision of medical services.

N.J.A.C. 8:43F-8.2 requires a facility to designate a physician to serve as the facility's medical consultant.

N.J.A.C. 8:43F-8.3 delineates the medical consultant's responsibility.

N.J.A.C. 8:43F-8.4 establishes the responsibilities of physicians, advanced practice nurses, and physician assistants.

Subchapter 9 addresses the pharmaceutical services that a facility is required to provide.

N.J.A.C. 8:43F-9.1 delineates the requirements for the provision of pharmaceutical services.

N.J.A.C. 8:43F-9.2 addresses medication administration policies and procedures.

N.J.A.C. 8:43F-9.3 and 9.4 establish pharmacies' reporting and control policies and procedures, respectively.

Subchapter 10 addresses dietary services.

N.J.A.C. 8:43F-10.1 provides the requirements for dietary services.

N.J.A.C. 8:43F-10.2 delineates the qualifications of food service supervisors.

N.J.A.C. 8:43F-10.3 delineates the qualifications of dietitians.

N.J.A.C. 8:43F-10.4 addresses the administrator's responsibilities for dietary services.

N.J.A.C. 8:43F-10.5 delineates the general requirements for dietary services.

Subchapter 11 addresses rehabilitation services.

N.J.A.C. 8:43F-11.1 delineates the requirements for rehabilitative and/or habilitative services and N.J.A.C. 8:43F-11.2 establishes the requirements for rehabilitative and/or habilitative supplies and equipment.

Subchapter 12 addresses social work services.

N.J.A.C. 8:43F-12.1 establishes the qualifications of social workers.

N.J.A.C. 8:43F-12.2 addresses the provision of social work services.

Subchapter 13 establishes the activities services that a facility is to provide.

N.J.A.C. 8:43F-13.1 and 13.2 delineate the requirements for the designation of an activities director and for the qualifications of the activity director, respectively.

N.J.A.C. 8:43F-13.3 provides the minimum requirements for the provision of activity services.

Subchapter 14 contains physical plant requirements.

N.J.A.C. 8:43F-14.1 and 14.2 provide the applicable construction code requirements.

N.J.A.C. 8:43F-14.3 through 14.16 provide the minimum requirements for all functional and service areas.

N.J.A.C. 8:43F-14.17 provides the requirements for emergency plans and procedures.

Subchapter 15 addresses the medical records that a facility is required to maintain.

N.J.A.C. 8:43F-15.1 and 15.2 delineate the requirements for the maintenance of medical records and the assignment of responsibility, respectively.

N.J.A.C. 8:43F-15.3 and 15.4 provide the requirements for the contents of medical records and the medical records policies and procedures, respectively.

Subchapter 16 contains the standards for infection control, sanitation, and house-keeping.

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N.J.A.C. 8:43F-16.1 and 16.2 address the administrator's responsibilities for infection control and the infection control policies and procedures, respectively.

N.J.A.C. 8:43F-16.3 delineates the requirements for employee health history and examinations.

N.J.A.C. 8:43F-16.4 provides the requirements for collecting, storing, handling, and disposing of medical waste.

N.J.A.C. 8:43F-16.5 and 16.6 provide minimum requirements for different aspects of housekeeping.

N.J.A.C. 8:43F-16.7 delineates the requirements for the participants' environment.

Subchapter 17 contains the requirements for transportation services.

N.J.A.C. 8:43F-17.1 and 17.2 provide the minimum requirements for transportation services and address security and accountability during transportation, respectively.

Subchapter 18 establishes quality improvement standards.

N.J.A.C. 8:43F-18.1 delineates the requirements for a quality improvement program.

N.J.A.C. 8:43F-18.2 addresses the use of restraints.

N.J.A.C. 8:43F-18.3 addresses personal care services.

Subchapter 19, Pediatric Day Health Services Facilities, contains the requirements specific to pediatric day health services facilities.

N.J.A.C. 8:43F-19.1 provides that pediatric day health services facilities are to comply with Subchapters 1 through 18, as well as the additional requirements for pediatric day health services facilities in Subchapter 19.

N.J.A.C. 8:43F-19.2 establishes staffing requirements for pediatric day health services facilities.

N.J.A.C. 8:43F-19.3 provides standards for the use of restraints.

N.J.A.C. 8:43F-19.4 provides for the provision of cribs or mats.

N.J.A.C. 8:43F-19.5 provides for staff qualifications.

N.J.A.C. 8:43F-19.6 establishes facility requirements.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

N.J.A.C. 8:43F establishes the minimum rules for the licensure of adult and pediatric day health services facilities. The intent of the rules is to ensure the quality of care provided to participants who receive day health services.

Adult and pediatric day health services facilities allow the participants to receive medical, nursing, and other services while remaining in the community and continuing to live in their own homes.

Individuals who are affected by the rules proposed for readoption include the entities that own and operate the facilities, the consumers who attend the facility programs, family members/caregivers, as well as staff who work at the facilities. Adult and pediatric day health services facilities benefit functionally impaired adults and medically needy children who do not require 24-hour inpatient care, but who require health care services and assistance with activities of daily living.

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Adult day health services provide adult participants with access to health care, while allowing them to maintain their independent status as much as possible, and to remain in their own homes, in familiar surroundings, for as long as possible. Another important benefit for adult participants is the ongoing monitoring of their health status, which may lead to early intervention for health problems and the decreased need for frequent hospitalizations.

Adult and pediatric day health services facilities also benefit family members and caregivers, by providing them with a respite from serving as primary caregivers and the freedom to work and earn a living while their loved ones are attending the facility programs.

The chapter has provided, and would continue provide, a mechanism to ensure that quality services are provided in adult and pediatric day health services facilities. As the rules that are proposed for readoption have only been in effect since February 1, 2006, information on the number of enforcement procedures and complaints is not yet available or is of such a minimal nature that it is not yet meaningful.

Economic Impact

The rules proposed for readoption are expected to have no economic impact on the public because they do not impose any additional costs on the State budget. The rules will not place any economic burden on the participants or on the Department. The economic benefit of these rules, that is, the provision of a service that provides for the least restrictive, most cost efficient use of health care resources will continue.

The rules proposed for readoption have had and would continue to have an economic impact on owners and operators of adult and pediatric day health services. However, no new or additional economic burdens, beyond the existing ones discussed below, would be imposed upon the regulated industry by the readoption of the existing rules at N.J.A.C. 8:43F. Accordingly, the Department does not anticipate that the rules proposed for readoption would have a significant economic impact on adult and pediatric day health services facilities.

The licensing fees that are specified in Subchapter 2 will continue to result in costs to the licensed facilities. Licensure costs are proposed at N.J.A.C. 8:43F-2.1, and are unchanged. The initial licensure fees, annual renewal fee, and application fee to add services or program slots each remain \$1,500 plus \$10.00 per slot. The biennial inspection fee remains \$450.00. The fee to file an application to reduce services or to relocate a licensed facility remains \$375.00. The application fee for a transfer of ownership remains \$1,500.

There will be an expense to licensees to meet the costs of professionals who provide medical services, administrative services, nursing services, pharmaceutical services, dietary, social services, rehabilitation services and activities. In addition, facilities will incur transportation expenses. As these costs will vary widely based on the census and the location of a facility, the Department is unable to estimate the economic impact of these services as a whole.

The various physical plant and functional requirements contained in Subchapter 14 do not impose any new requirements on licensed facilities as these facilities already have an approved physical plant. Licensed facilities will continue to incur costs in maintaining

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the existing physical plant in order to comply with the rules. The Department is unable to estimate these costs, as they will vary widely between facilities.

Assistance in preparation of waivers and documentation of reasons for requests of waivers may result in costs to facilities. In addition, licensees may incur costs for penalties for failing to meet the standard of care or safety requirements in the rules. The appeal of such a penalty may result in the licensee entailing costs for professional services, such as those of attorneys. However, such services are not specifically required by the rules.

Federal Standards Statement

The rules proposed for readoption are not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

Jobs Impact

The Department does not anticipate that the rules proposed for readoption would result in and increase or decrease in the number of jobs available in the State.

Agriculture Industry Impact

The rules proposed for readoption would not have an impact on the agriculture industry of the State.

Regulatory Flexibility Analysis

The rules proposed for readoption impose reporting, recordkeeping and compliance requirements on the 126 licensed adult day health services facilities and the 12 pediatric day health services facilities have fewer than 100 full-time employees and may, therefore, be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The reporting, recordkeeping, and compliance requirements are discussed in the Summary above. The rules proposed for readoption do not impose any additional requirements on facilities.

Professional services required by the rules include registered dietitians, licensed social workers, registered nurses, registered pharmacists, and physicians, to the extent needed by the participants of the facilities, as determined by the participants' care plans. As these costs will vary between facilities based on size and participant needs, the Department is unable to estimate the cost of the impact of these requirements.

The Department has determined that the rules proposed for readoption impose the minimum standards necessary to protect the health and safety of participants at adult and pediatric day health services facilities. Therefore, the Department has provided no lesser or differing standards for small businesses.

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Smart Growth Impact

The Department does not anticipate that the rules proposed for readoption would have an impact on the achievement of smart growth or implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:43.